

Service Date: August 30, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Complaint)	UTILITY DIVISION
of Customer Carpets,)	
)	DOCKET NO. D99.4.89
Complainant,)	ORDER NO. 6224a
)	
-vs-)	
)	
U S WEST Communications, Inc.,)	.
)	
Defendant.)	

FINAL ORDER

APPEARANCES

For the Complainant

William Fleischman, President, Customer Carpets, Inc.,
701 Edith Street, Missoula, MT 59801

For the Respondent

John Alke, Attorney, Hughes, Kellner, Sullivan & Alke,
P.O. Box 1166, Helena, MT 59624-1166

For the Public Service Commission

Robin A. McHugh, Staff Attorney, Montana Public Service Commission,
1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601

Before:

Bob Rowe, Commissioner and Hearing Examiner

Pursuant to 2-4-621, MCA, a proposed order dismissing the complaint in this matter was issued on August 2, 2000. No exceptions, briefs or requests for argument have been received. Therefore, the Commission adopts the proposed order as its final order in this docket.

Background

1. Customer Carpets, Inc. (Customer Carpets) called U S WEST Communications, Inc. (U S West) and ordered two new business lines for their warehouse in Milltown, Montana. When the installation technician went out to install the lines, the warehouse contained no inside telephone wiring. William Fleischman of Customer Carpets helped the technician run the inside wiring. Customer Carpets' first bill for the telephone lines came to \$703.17 and Mr. Fleischman called U S West to complain. He demanded an explanation in writing from U S West which, even after several calls, he did not receive. He filed a Complaint with the Montana Public Service Commission (PSC).

2. In the process of trying to settle the complaint, the bill for Customer Carpets was explained to Mr. Fleischman by Tina Shorten of the PSC staff.

3. A hearing was held on June 23, 1999, in the Bollinger Room at the PSC with Commissioner Bob Rowe as hearing examiner. Mr. Fleischman appeared pro se for Complainant, Customer Carpets. John Alke of Hughes, Kellner, Sullivan & Alke appeared for the respondent, U S West. Robin McHugh, staff attorney, appeared for the PSC. The following discussion, findings, and conclusions are a result of the testimony and evidence presented at the hearing.

Findings and Discussion

4. On April 8, 1999, the PSC issued a Notice of Complaint against U S West. The complaint regarded billing for the installation of two lines at Customer Carpets' warehouse in Milltown, Montana. Customer Carpets claimed the bill was unreadable and that the final amount was excessive. The complaint alleged that Customer Carpets was not informed about the cost prior to installation.

5. On April 27, 1999, U S West filed its response to the Complaint. In their general denial, U S West stated that the order for the two lines was properly handled and the customer was given the applicable rates for the work requested.

6. At the prehearing conference, it was decided that the sole issue for the formal hearing was whether U S West complied with Administrative Rules of Montana (ARM) 38.5.3330 when it initiated service for complainant Customer Carpets. ARM 38.5.3330 reads as follows:

RATE AND SPECIAL CHARGES INFORMATION

(1) The exchange carrier must provide all information and assistance needed by applicants, customers, or others to determine the lowest cost telecommunications service available from the exchange carrier that meets their stated needs. The exchange carrier must immediately provide a commission approved catalog of available services and prices in response to all service orders, at the request of customers, and as otherwise required by the commission.

(a) Prior to taking any action or offering any service, the exchange carrier must notify customers of any connection charge or other charge and must provide an estimate of the initial bill for flat monthly services and other applicable charges. The carrier must give an applicant a written estimate of special charges for services not established by tariff such as construction charges which are levied on an actual cost basis.

Additional issues were reviewed informally before and after the hearing. Those are not part of the issue being formally addressed here. Also not at issue are the unregulated charges that are part of the total bill (\$703.17) referred to at paragraph 1. The unregulated charges are \$275.28, leaving \$427.62 in regulated charges. Of the \$427.62, regular installation charges account for \$228.26, the advance bill for both lines accounts for \$114.52, and the prorated bill for the previous month accounts for \$103.75. Mr. Fleischman was given a promotional credit of \$25.00. ($\$427.62 - \$228.26 - \$114.52 - \$103.75 + \$25.00 = \6.09 . The \$6.09 represents federal excise tax of 3%.) See the July 1, 1999 letter to Mr. Fleischman from U S West and February 7, 2000 letter to Mr. Fleischman from Janet Ellis and Tina Shorten of the PSC staff, both attached.

7. Angela Jacobs, the small business sales consultant who took the Customer Carpets order testified that she quoted the price to Customer Carpets for the services ordered when Mr. Fleischman placed the order.¹

¹ Deposition of Angela Michele Jacobs, June 16, 1999, pg. 12, line 23 – pg. 13, line 2: Transcript of Proceedings, June 23, 1999, pg. 27, lines 13-17.

8. John Heberle, Manager, Customer Advocacy, U S West, testified that he followed through on the PSC's initial inquiry into Mr. Fleischman's letter of complaint with a memo explaining the questioned charges.² The PSC received the memo and sent it to Mr. Fleischman. (The PSC received the memo on March 24, 1999 and forwarded it on March 25, 1999.)

9. Mr. Fleischman testified that it was possible that the charges were quoted and explained to him prior to the installation:³

Q: I guess that was going to be my next question. Do you agree, then, that you may have been informed about the charges?

A: By phone to a faceless person named Angie. . . .

. . .

Q: (By Mr. McHugh) Mr. Fleischman, I'll just keep going. At the bottom of Page 11, Line 23, Ms. Jacobs indicates, "I also advised him of additional SYE construction charges that would apply per line due to the fact there was no prior service in the building and it was a rural addressed area."

Question: "Okay. So you quoted the pricing and the circumstances that you described, you related that and told that to the customer?" Answer: "Yes."

Question: "Are you certain that you quoted the Customer Carpets a price for these services as you described?" Answer: "Yes, I am."

Do you recall being informed –

A: No.

Q: -- of these prices?

A: I don't. Certainly no total.

Q: Okay. But again, is your answer that it's possible that some of this information may have been provided, you just don't remember?

A: It's possible, but –

10. Mr. Fleischman requested a written explanation of his bill several times with no response from U S West. Angela Jacobs did call Mr. Fleischman but he was not satisfied with her explanation because he requested it in writing and not by telephone. The bill was also explained to him by Tina Shorten but still not by U S West in writing as he requested.

² Transcript of Proceedings, June 23, 1999, pg. 32.

³ P. 45, ll. 8-11, p. 46, ll. 1-20; see also, pg. 44, l. 14 through pg. 46, l. 20, *passim*.

11. The installation technician did not leave an invoice with Mr. Fleischman as is the policy of U S West. The work charged on the bill, however, was the work completed by the technician in connection with the order placed by Mr. Fleischman for Customer Carpets.⁴

12. The Montana PSC is bound by the laws and administrative rules of Montana. The bill sent to Customer Carpets, while confusing, did comply with the requirements of Montana law. ARM 38.5.3332 in pertinent part reads:

CUSTOMER BILLING (1) Billing procedures.

- (a) Typed or machine-printed bills must be issued monthly, unless there are no charges during the month.
- (b) Residential and single-line business bills must itemize by tariff element the charges for all services. The bill must clearly provide the following information:
 - (i) payment due date;
 - (ii) total amount due, including taxes;
 - (iii) the toll-free telephone number of the company's business office serving the customer;
 - (iv) a statement that regulated services may not be disconnected for nonpayment of nonregulated services or services provided by other carriers, except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service;
 - (v) the address and telephone number of the commission.

13. U S West did provide a written explanation of the bill to Mr. Fleischman (see paragraph 8). Mr. Fleischman was not satisfied with that explanation and U S West provided a second explanation after the hearing at the instruction of Commissioner Rowe. (July 1, 1999) PSC staff sent Mr. Fleischman another explanation on February 7, 2000.⁵ Despite not satisfying Mr. Fleischman, U S West did follow the rules and laws of Montana in taking and installing Customer Carpets' order. Although the installation technician should have left an invoice, Customer Carpets received the service it ordered and was billed pursuant to the rates in effect and on file with the PSC.

Conclusion of Law

1. The Montana PSC has jurisdiction over this matter pursuant to §§ 69-3-102, 69-3-103, 69-3-321 and 69-3-330, MCA.

⁴ Id. at pg. 35, ll. 2-13.

⁵ The written explanations sent to Mr. Fleischman are attached.

Order

Based upon the information and evidence received, the Commission finds:

1. The record does not support a conclusion that Customer Carpets was not told the charges when the order was placed.
2. USWC did charge Customer Carpets according to the filed tariff.
3. The bill was difficult to read. However, the evidence is insufficient to conclude that U S West violated ARM 38.5.3330.
4. Therefore, the Commission finds that the complaint should be dismissed.

DONE AND DATED this 28th day of August, 2000.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

